

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA,
a Municipal Corporation,

Petitioner,

v.

OCEAN RISK RETENTION GROUP,
INC.

Respondent.

Civil Action No.: 13-6110 2

Judge: Wright

Calendar No.: 15

Next Event: Status 4/8/14

MOTION TO CLARIFY COURT'S SEPTEMBER 24, 2013 STAY ORDER

The District of Columbia (the "District") at the request and on behalf of William P. White, Commissioner of the District of Columbia Department of Insurance, Securities and Banking ("DISB"), as liquidator (the "Liquidator") of Ocean Risk Retention Group, Inc. ("Ocean"), by and through the Office of the Attorney General for the District of Columbia, respectfully moves this Court for a supplementary order clarifying the meaning and application of the Court's Order Staying and Enjoining All Litigation ("Stay Order") issued in this case on September 24, 2013.

The Stay Order is properly understood as staying litigation that could (1) unfairly advantage certain creditors and (2) diminish Ocean's assets prior to their distribution pursuant to the liquidation process. When Ocean, as a plaintiff, initiates an action with the aim of recovering assets to which it is entitled, neither of these concerns is implicated, and the Stay Order should not stay, enjoin, or otherwise interfere with the action. The purpose of the motion is to obtain clarification to ensure that the Stay Order is correctly understood by all concerned parties. For the reasons stated more fully in the Memorandum of Points and Authorities incorporated herein by this reference, the Petitioner therefore requests that the Court enter the attached order.

November 8, 2013

Respectfully Submitted,

IRVIN B. NATHAN
Attorney General for the District of Columbia

ELLEN A. EFROS
Deputy Attorney General
Public Interest Division

/s/ *Stephane J. Latour*
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CERTIFICATION PURSUANT TO SCR-CIVIL 12-I

The present litigation is an insurance liquidation proceeding and the District is now the only party to the litigation, the requirement under SCR-Civil 12-I(a) to request consent to this motion from an opposing party does not apply.

/s/ *E. Louise R. Phillips*
E. LOUISE R. PHILLIPS
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2013, a copy of the foregoing Motion to Clarify Court's September 24, 2013 Stay Order was served by email upon:

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO
CLARIFY COURT'S SEPTEMBER 24, 2013 STAY ORDER**

The District at the request of and on behalf of the Liquidator of Ocean, through their attorneys, moves this Court for a supplementary order clarifying the meaning and application of the Order Staying and Enjoining All Litigation (the "Stay Order") issued in this case on September 24, 2013, and states the following:

I. BACKGROUND AND PROCEDURAL HISTORY

1. Ocean is a captive insurer, organized and licensed under the laws of the District of Columbia (the "District"), that offered liability insurance to taxi owner-operators and to taxi fleet owners in New Jersey and Pennsylvania.
2. The District, at the request of and on behalf of DISB's Commissioner, filed an Emergency Consent Petition for an Expedited Order of Liquidation of Ocean Risk Retention Group, Inc., Pursuant to D.C. Official Code §§ 31-1303, 31-1315, 31-1316 and 31-3931.01 *et seq.* on or before September 10, 2013 (the "Emergency Consent Petition").

3. After consideration of the Emergency Consent Petition and the entire record, the Court issued the Emergency Consent Order of Liquidation ("Liquidation Order") and appointed DISB's Commissioner as Ocean's Liquidator on September 6, 2013.
4. Pursuant to the Liquidation Order and D.C. Official Code § 31-1319(a)(1) (2001), on September 10, 2013, the Liquidator appointed Robert H. Myers, Jr. to be the Special Deputy Liquidator for the purpose of liquidating Ocean and for any related actions. The appointment order was attached as Exhibit 1 to the Liquidator's First Status Report and Motion for (1) Order Approving Appointment of Special Deputy and (2) Order Staying and Enjoining All Litigation Against Ocean Risk Retention Group, Inc. and Its Policyholders ("First Status Report and Stay Motion").
5. The Court granted the Motion on September 24, 2013 and issued the Stay Order, which among other things, stayed and enjoined "any litigation against Ocean [and ...] any litigation *against Policyholders of Ocean in cases in which Ocean may have a duty to defend or indemnify its Policyholders.*" (Emphasis added).

II. BASIS FOR AND PURPOSE OF THE STAY ORDER AND REQUEST FOR CLARIFICATION

6. The Liquidator's First Status Report and Stay Motion explained the basis and purpose of the Stay Order. In brief, without a stay, claimants could continue to prosecute litigation, could seek to obtain a determination of Ocean or its Policyholders' liability to them, could seek to recover of Ocean's assets and/or could seek to obtain some other advantage in the resolution of their claim against the liquidation estate. Resolution of claims in other courts might result in inconsistent adjudication of identical or similar claims. Accordingly, allowing claimants to pursue their claims against Ocean or its Policyholders would defeat the purpose of the liquidation process, namely that all claims

will be fairly, consistently and equitably resolved in the liquidation proceeding pending before this Court.

7. The language of the Stay Order limits its application to suits *against* Ocean, either directly or indirectly through its Policyholders. The Order does *not* apply if Ocean itself sues a Policyholder who owes money to Ocean. Ocean does not have a duty to defend or indemnify its Policyholders in such an action, and therefore such an action does not implicate the concerns behind the Stay Order. In fact, the purpose of the Stay Order, as well as the Liquidation Order, would be undercut if Ocean was *prevented* from taking action to recover assets due to it.
8. The statute makes it clear that a Stay Order does not stay or enjoin actions in which the insurer in liquidation sues to reclaim assets. *See* D.C. Official Code § 31-1304(a)(11) (2001). For instance, if a Policyholder had unjustly enriched itself at Ocean's expense, staying Ocean's suit to recover the improperly obtained assets would have the effect of lessening the value of Ocean's total assets. This would prejudice the rights of other Policyholders and creditors to recover in the liquidation proceedings. Applying the Stay Order in this way would, therefore, run directly counter to the purpose of Section 31-1304(a)(11).
9. The proper scope of the Stay Order is confirmed by other provisions in D.C. Official Code. Section 31-1316(a) vests the Liquidator with "all title to all the property, contracts, *and rights of action*" of the liquidated insurer (emphasis added). Such rights of action would be valueless without the ability to prosecute them in court. To interpret the Stay Order in a manner that tied Ocean's hands would lessen the value of Ocean's assets and interfere with the liquidation process.

10. In addition to possessing the liquidated insurer's rights of action, the Liquidator has the power to enforce such rights via legal action. Section 31-1319(a) of the D.C. Official Code specifies that the powers of the Liquidator include:

(8) To *collect all debts and moneys due and claims belonging to the insurer*, wherever located, and for this purpose:

(A) To *institute timely action* in other jurisdictions, in order to forestall garnishment and attachment proceedings against the debts;

(B) To do any other acts necessary or expedient to collect, conserve, or protect assets or property of the insurer, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as he or she deems best; and

(C) To *pursue any creditor's remedies* available to enforce his or her claims;

[...]

(14) To continue to *prosecute and to institute in the name of the insurer, or in his or her own name, any and all suits and other legal proceedings*, in the District or elsewhere . . . ;

(15) To *prosecute any action which may exist* in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer, or any other person

(Emphasis added).

11. Ocean therefore is prosecuting several subrogation actions. In several such actions, however, counsel for defendants have raised the Stay Order as a bar to Ocean's continued prosecution of the subrogation claims. Under Section 31-1304(a) of D.C.

Official Code, the Court has the power to grant any orders “necessary and proper” to the liquidation process.

III. RELIEF REQUESTED

Wherefore, for the reasons discussed above, the Petitioner moves the court for the entry of a supplementary order clarifying that the September 24th Stay Order does not stay, enjoin, or otherwise interfere with actions where Ocean as plaintiff and/or claimant seeks to recover its assets, including, but not limited to subrogation actions or suits against Policyholders for unjust enrichment.

Respectfully Submitted,

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ELLEN A. EFROS
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**SUPPLEMENTARY ORDER CLARIFYING SEPTEMBER 24, 2013 ORDER STAYING
AND ENJOINING ALL LITIGATION**

The District of Columbia at the request of and on behalf of the Liquidator of Ocean Risk Retention Group, Inc. ("Ocean") sought to further clarify this Court's Order of September 24, 2013, that stayed and enjoined, until further order of this Court, the commencement or continuation of any litigation against Ocean and, for one (1) year from entry of this Order, any litigation against policyholders of Ocean ("Policyholders") in cases as to which Ocean may have a duty to defend or indemnify its Policyholders. After considering the Motion to Clarify the Court's September 24, 2013 Stay Order, the Court's previous orders in this matter, and the entire record, the Court finds that: (1) this Court has the power to enter orders clarifying and/or modifying its previous Orders under D.C. Official Code § 31-1304; and (2) the motion to clarify order should be granted.

It is therefore, ORDERED as follows:

1. This Court's September 24, 2013 Stay Order remains in effect such that,
 - a. All litigation pending against Ocean is hereby stayed until further order of this Court;

- b. All persons and entities are hereby enjoined until further order of this Court from commencing or continuing any litigation against Ocean;
 - c. All litigation pending against any Policyholder is hereby stayed for one (1) year from entry of this Order, and
 - d. All persons and entities are hereby enjoined from commencing or continuing any litigation against a Policyholder for a period of one (1) year from the date of entry of this Order.
2. It is further ordered that no provision of this Order, or of the September 24, 2013 Stay Order, shall be construed, interpreted, or understood to stay, enjoin, or otherwise interfere with Ocean's right as plaintiff to take legal action to recover assets from any person, including a Policyholder.
3. This Court shall retain jurisdiction to modify or extend the stay and injunction provided herein.

SIGNED and ENTERED _____, 2013.

Melvin R. Wright
Judge, D.C. Superior Court

cc:

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